

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.12787 of 2006
Date of decision: October 30,2006

Dr. Rashpal Singh Rattol V. State of Punjab and others

**CORAM: HON'BLE MR.JUSTICE VINEY MITTAL
HON'BLE MR. JUSTICE H.S.BHALLA**

Present: Shri Deepak Sibal, Advocate for the petitioner.
Shri Sukhdip Singh Brar, Additional Advocate General
Punjab for respondents No.1 to 3 and 5 to 7.
Shri Anupam Gupta, Advocate for respondent No.4.
Shri Akshay Bhan, Advocate for respondent No.8.

Viney Mittal, J.

Petitioner, Dr. Rashpal Singh Rattol, has challenged the admission granted to respondent No.8, Dr. Sham Sunder Goyal, in M.D.(Radiodiagnosis). Additionally, the petitioner has challenged order dated August 3,2006, annexure P/17, passed by Secretary, Department of Medical Education and Research, Government of Punjab, respondent No.1, whereby the aforesaid admission granted to respondent No.8 has been upheld.

Petitioner as well as respondent No.8 had appeared in a common entrance test-PGET,2006 conducted by Baba Farid University of Health Sciences, respondent No.4, for admission to P.G.Courses. Both the aforesaid applicants had appeared as “ in-service candidates” being in the service of State Government of Punjab. Whereas petitioner had obtained 376 marks and had been placed at rank No.3, respondent No.8 had obtained 372 marks and was placed at rank No 4 in PCMS-60% quota category. Respondent No.8, at the time of counselling was given four additional marks for

rendering rural service over and above three years of minimum rural service required as an eligibility condition for admission under the aforesaid 60% quota category. Consequently, he was granted admission in MD (Radiodiagnosis), whereas petitioner was offered admission in M.S.(Orthopedics). The petitioner claimed that respondent No.8 had not completed such rural service, as to entitle him to have four additional marks and, therefore, he submitted a representation to the respondent and also the Director, Research and Medical Education, Chairman of the Selection Committee making the aforesaid grievance. It was maintained by the petitioner that respondent No.8 was granted admission on the basis of certificates which were contrary to the factual position and, as such, could not be relied upon. According to the petitioner, certificate dated June 2,2006 issued by the Director, Health and Family Welfare, Punjab,respondent No.2 in favour of respondent No.8 was subsequently cancelled and withdrawn vide communication dated June 7,2006. On the basis of the aforesaid withdrawal of the original certificate issued in favour of respondent No.8, petitioner submitted various other representations bringing the aforesaid fact to the notice of the authorities.

It is claimed by the petitioner that despite the aforesaid facts having been brought to the notice of the Admission Committee, the admission granted to respondent No.8 was not cancelled. In these circumstances, the petitioner approached this Court through an earlier Writ Petition being C.W.P. No.9522 of 2006 challenging the admission granted to respondent No.8. In the aforesaid writ petition, written statements were filed by the respondents. After taking into consideration the divergent pleas taken by the parties, vide an order dated July 20,2006, the aforesaid writ petition filed by

the petitioner was disposed of with a direction to Secretary Medical Education and Research, Punjab to look into the entire matter and take a final and appropriate decision.

In pursuance to the aforesaid directions, the pleas of both the parties were examined by respondent No.1 and record pertaining to the eligibility conditions and additional marks etc. was also examined. However, vide an order dated August 3,2006, the plea of the petitioner was rejected and the admission granted to respondent No.8 was upheld. A copy of the order dated August 3,2006 passed by respondent No.1 has been appended as Annexure P/17 with the present petition and is also a subject matter of challenge by the petitioner before this Court.

It is, in these circumstances, that the petitioner has approached this court through the present petition.

The claim of the petitioner has been contested by the respondents. Separate written statements have been filed by respondents No.1 to 3, respondent No.4, respondent No. 5 and respondent No. 8. Various pleas raised by the petitioner have been denied. Admission granted to respondent No.8 in M.D. (Radiodiagnosis) has been defended.

We have heard Shri Deepak Sibal, learned counsel appearing for the petitioner, Shri Sukhdip Singh Brar, Additional Advocate General, Punjab for respondent No.1 to 3 and respondents No.5 to 7, Shri Anupam Gupta, learned counsel appearing for respondent No.4, Baba Farid University and Shri Akshay Bhan, learned counsel appearing for admitted candidate, respondent No.8, and with the assistance of the learned counsel, have also gone through the record of the case.

At the out set, we may notice that Shri Sukhdip Singh

Brar, learned Additional Advocate General, Punjab has produced before us the original service-book of respondent No.8 indicating his places of posting from the date he joined service. Shri Anupam Gupta, learned counsel appearing for the respondent-University and the Counselling Committee has also produced before us record of the counseling committee. We have also gone through the aforesaid record.

Shri Deepak Sibal, learned counsel appearing for the petitioner has drawn our pointed attention to sub-clauses(ix) and (x) of Clause 15(a) of notification dated March 29,2006 whereby one mark for each completed year of rural service , over and above the three years minimum rural service (required for eligibility for admission under 60% quota), is required to be given and also as to what could be considered as a rural service on the basis of which aforesaid incentive is to be given. For the sake of ready reference, we may reproduce the aforesaid clauses as below :

“15(a) (ix). One mark for each completed year of rural service over and above the three year minimum rural service (required for eligibility for admission under 60% quota) shall be given to PCMS/PCMS(Dental) doctors for admission to Post Graduate Courses. The incentive of additional marks would be available only to those PCMS candidates who have obtained the minimum qualifying marks at PGET-2006 prescribed for the concerned category. The maximum number of marks irrespective of the total length of rural service shall in no case exceed a total of 5 (five).

(x). The completed years of rural service on the basis of

which incentive is to be given, must have been rendered at places, which are at least 15 kms or more beyond the Municipal/City/Notified Area Committee limits. Certificate to this effect from the concerned Civil Surgeon/Medical Superintendents of ESI Hospitals/Principal Government Medical Colleges/Director Health and Family Welfare Punjab is required to be submitted at the time of application.”

In the backdrop of the aforesaid conditions of the notification, Shri Sibal has referred to the certificate Annexure P/10 dated June 2, 2006 whereby, besides a minimum three years of rural service, when respondent No.8 Dr. Sham Sunder Goyal had remained posted at Subsidiary Health Centre (SHC), Giljey Wala for a period from April 28, 1998 to April 28, 2001, the said respondent had further remained posted in SHC, Giljey Wala for a period of one year only at that place. Learned counsel has pointed out that the said certificate indicates that respondent No.8 had posted at SHC, Badhai for one year 10 months and at GGS Medical College for six months (a posting which had also been declared as rural posting vide notification dated February 17, 1982); thus, a total additional rural posting of four years and 11 months. Learned counsel has also pointed out that the aforesaid certificate Annexure P/10 was subsequently withdrawn on June 7, 2006, when through another certificate Annexure P/12, it was indicated that besides the mandatory posting of three years, respondent No.8 had remained posted at SHC Giljey Wala from April 29, 2001 to April 23, 2002 i.e. for 11 months and 26 days and thereafter at SHC Sotha and SHC Badhai for a period of one year 7 months and 1 year 10 months respectively, but both the latter postings were within 11 kms and 8

kms from the municipal limits respectively. Learned counsel has, thus, maintained that the latter postings of respondent No.8 at SHC Sotha and SHC Badhai being not beyond 15 kms of municipal limits could not be taken into consideration for awarding additional marks to respondent No.8. It is, on the basis of the aforesaid fact, that learned counsel has contended that petitioner being higher in merit in the common entrance test was entitled to admission to M.D. (Radiodiagnosis) in preference to respondent No.8, who was lower in merit and was not entitled to any additional marks.

All the aforesaid contentions raised by the learned counsel for the petitioner have been refuted by the learned counsel for the respondents.

Shri Anupam Gupta, learned counsel appearing for Baba Farid University of Health Sciences, which had conducted admission process and counselling, has referred to the stand taken by the University in its written statement. Shri Gupta has pointed out that through notification dated March 29,2006, as modified by notification dated April 19,2006, issued by the State Government of Punjab, Admission Committee for admission/counselling was constituted comprising of the Principal, Government Medical College, Patiala as the Chairman, Principal of the concerned colleges as member, Registrar of University as another member and representative of the Welfare Department as also a member. Shri Gupta has conceded that both the petitioner and respondent No.8 had appeared and qualified the test under 60% quota meant for in-service PCMS candidates and that the petitioner had secured 376 marks and was placed at rank No.3, whereas respondent No.8 had secured secured 372 marks and was placed at rank No.4. Shri Gupta has also pointed out to the averments made in Paras 2 and 3

of the short reply filed by the Registrar of the University to the following effect :

“2. “That as regards rural service of respondent No.8, it is submitted that as per service record of respondent No.8, he joined Punjab Civil Medical Services (PCMS) on 28.04.1998 at SHC Giljeywala under PHC Doda, District Muktsar pursuant to order dated 26.04.1998 issued by the Government of Punjab. He worked there as such upto November 2003. Thereafter, he was shifted to SHC Badhai under PHC Chack Sherewala, district Muktsar vide order dated 06.11.2003 endorsed by Civil Surgeon, Muktsar on 13.11.2003. Then respondent No.8 joined GGS Medical College, Faridkot as Demonstrator in the Department of Physiology pursuant to order dated 01.09.2005 issued by the Government of Punjab and from there respondent No.8 has been relieved for the PG Course viz. MD (Radiodiagnosis), the admission to which has been impugned in the present petition. As per Punjab Government Notification No.7(16)-5HB3-79/2639 dated 17.2.1982 (Annexure R-4/1) service in the basic Departments of Physiology, Anatomy, Pharmacology, Pathology, Biochemistry at Guru Gobind Singh Medical College, Faridkot is to be considered as rural service. As such, respondent No.8 has a total period of 8 years, 1 month, 14 days as rural service to his credit viz. 28.4.1998 to 14.7.2006. Of this, Respondent No.8 performed duty in the rural area at SHC Giljeywala from April 1998 to November 2003 i.e. more than 5 years

which is beyond 15 kms of the Municipal Limits. It is, thus, evident that respondent No.8 has more than 5 years of rural service to his credit in terms of clauses 15(a)(ix) and 15(a)(x) of the State Government notification dated March 29,2006 and therefore, was entitled for grant of additional marks as provided in the said clause viz. Clause 15(a)(ix). A copy of the proceedings of the second counseling held on 12.6.2006 is attached as **Annexure R-4/2**. The same speaks for itself.

3. That as stated above, the result of the PGET 2006 was declared on 16.05.2006. The petitioner secured 376 marks and was placed at 3rd rank in the merit list whereas respondent No.8 secured 372 marks and was placed at 4th rank. As respondent No.8 was granted benefit of additional marks in terms of clause 15(a)(ix), he was placed above the petitioner in the merit list of first counselling. The first counselling was held on 26.05.2006 and the said list was displayed on the board. At that time nobody including the petitioner raised any objection with regard to said list. Respondent No.8 opted for and was recommended for admission in MD (Radiodiagnosis) as per merit whereas the petitioner opted for MS (Orthopaedics) and his name was accordingly recommended for the said course by the Admission Committee. A copy of the petitioner's option Form/Declaration as filled and signed by him is attached as **Annexure R-4/3**. A perusal of the said declaration shows that the petitioner consciously and expressly accepted admission in MS (Orthopaedics). Though the

name of the petitioner was recommended for admission in the course of Orthopaedics as aforesaid but for the reasons best known to him he did not deposit the fee for the said course and instead submitted representation disputing the admission of respondent No.8 in the course of MD (Radiodiagnosis). On 12.6.2006, during the second counselling, the petitioner was advised to deposit the fee for the course to which he had been admitted. Despite this special concession shown to the petitioner, he did not deposit the fee even on 12.6.2006. Accordingly, the Admission Committee offered the seat in MS (Orthopaedics) to the next candidate as per merit in the second counselling.”

On the basis of aforesaid averments, learned counsel appearing for respondent-University has maintained that respondent No.8 had joined Punjab Civil Medical Service(PCMS) on April 28,1998 at SHC, Giljey Wala in Primary Health Centre(PHC), Doda, District Muktsar in pursuance to an order dated April 26,1998 issued by the State Government of Punjab and had worked at the aforesaid place till November,2003. Thereafter respondent No.8 was shifted to SHC Badhai vide order dated November 6,2003. Later on in pursuance to order dated September 1,2005, respondent No.8 joined GGS Medical College, Faridkot as Demonstrator in the Department of Physiology. It was from that place that respondent No.8 was relieved when he was admitted to PG Course in MD (Radiodiagnosis). Learned counsel has also referred to a notification dated February 17,1982 whereby service in the basic Department of Physiology, Anatomy, Pharmacology, Pathology, Biochemistry at Guru Gobind Singh Medical College, Faridkot is to

be considered as rural service. In these circumstances, according to the learned counsel, respondent No.8 had a total service of 8 years 1 month and 14 days as rural service to his credit with effect from April 29,1998 till July 14,2006. After deducting the mandatory service of three years, according to the learned counsel, respondent No.8 has more than five years of rural service to his credit and therefore was entitled to the grant of additional marks.

Learned counsel for the respondent-university has also referred to the fact that first counseling for admission to PG Course was held on May 26,2006 and, at that point of time, respondent no.8 opted for and was recommended for admission in MD (radiodiagnosis) as per his merit position, after the additional marks and the petitioner had opted for M.S.(Orthopedics) and his claim was, accordingly, recommended for the said course by the Admission Committee. A copy of the option form/declaration submitted by the petitioner has been appended as Annexure R-4/3 with the short reply of the University and has been specifically referred to by the learned counsel to show the option expressed by the petitioner.

Shri Sukhdip Singh Brar, learned Additional Advocate General, Punjab has also referred to the service book of the petitioner wherein factual position depicted in the short reply filed by the University is fully supported and substantiated.

Shri Akshay Bhan, learned counsel appearing for respondent No.8 has also taken a similar stand. As a matter of fact, respondent No.8 Dr. Sham Sunder Goyal is present in court. On a specific query put to him by the Court, the said respondent has stated that after his initial posting at SHC, Giljeywala under PHC Doda, he had remained posted at Giljeywala but was put on

temporary duty by the Senior Medical Officer to SHC Sotha and SHC Badhai, which Health Centres were also within the jurisdiction and control of the same Senior Medical Officer. The said respondent has specifically maintained that at no point of time he was transferred from SHC Giljeywala. Shri Akshey Bhan, learned counsel appearing for respondent No.8 has also relied upon the service book of the petitioner.

As noticed in the earlier portion of this judgment, besides noticing the various pleas raised by the parties, we have also gone through the service book of respondent No.8 as well as record of the Admission/Counselling Committee.

From the aforesaid perusal of the service record of respondent No.8 and also the record of the Admission/Counselling Committee, we are satisfied that respondent No.8 had remained posted at SHC, Giljeywala from his initial positing on April 28,1998, when the said respondent had joined PCMS on his first appointment and had worked at the same place upto November, 2003. Thereafter respondent No.8 had served for a period of six months as a Demonstrator in the Department of Physiology in GGS Medical College, Faridkot. As per notification dated February 17,1982 even the aforesaid service of respondent No.8 was liable to be treated as rural service. In these circumstances, respondent No.8 has a total of 8 years, 1 month and 14 days of rural service to his credit i.e. a period of more than 5 years of additional service over and above the period of three years of mandatory rural service, being the eligibility condition. In view of the aforesaid additional service, respondent No.8 was rightly granted additional marks, placing him over and above the merit position of the petitioner.

In these circumstances, we find no merit in the present

petition. The writ petition is, accordingly, dismissed.

(Viney Mittal)
Judge

October 30,2006
sks

(H.S.Bhalla)
Judge